

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

JAMES HIGGINS and GAIL BEAR CHILD,

Case #0089013135 & 0089013254

Charging Parties,

ORDER

-v-

BROWNING SCHOOL DISTRICT,

Respondent.

James Higgins (Higgins) filed a complaint with the Department of Labor and Industry (Department) alleging that the Browning School District discriminated against him based on race, color, and national origin and retaliated against him when he was given a verbal warning, when he was not allowed to use a certain book, and when he was prevented from serving on committees that make decisions about the school.

Gail Bear Child (Bear Child) filed a complaint with the Department alleging that the Browning School District discriminated against her based on race, color, national origin, disability, perceived disability, or association with a disabled person and retaliated against her. She asserted she was discriminated against when she was given a written reprimand, when she was not offered the opportunity to teach summer school, when she was denied training, when she was removed from supervising a cultural club, and when she was disciplined differently than Caucasians.

Following informal investigations, the Department determined that a preponderance of the evidence did not support Higgins' and Bear Child's allegations of unlawful discrimination. The Department issued Notices of Dismissal. Higgins and Bear Child filed objections with the Montana Human Rights Commission (Commission). After filing their objections, Higgins and Bear Child consolidated their cases into one with no

objection from the Respondent. The Commission considered the consolidated matter on September 23, 2009.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. *Section 49-2-511(2), MCA*. After careful consideration, the Commission concludes the determination of the Department to dismiss the complaints in this case is not an abuse of discretion.

If a charging party chooses to commence a civil action in district court, the charging party has 90 days after the date this order is issued to file a complaint in district court, in the district where the alleged violation occurred, for the appropriate relief. *Section 49-2-511(3)(a), MCA*. If a charging party fails to commence a civil action within 90 days, their claims are time barred. *Id.*

Alternatively, a party may ask a district court to review the decision of the Commission to affirm the dismissal of a complaint. *Section 49-2-511(3)(b), MCA; Mont. Code Ann. § 2-4-702*. This review must be requested within 30 days after the date this order is issued.

IT IS HEREBY ORDERED, that James Higgins' and Gail Bear Child's objections are **overruled**. The Commission affirms the determination of the Human Rights Bureau to dismiss the complaint against Browning School District.

DATED this 5th Day of October 2009

Chair Ryan C. Rusche
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 5th Day of October 2009

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